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10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN MARIANA ISLANDS

12 LISA S. BLACK,	) CIVIL ACTION NO. 05-0038
	)
13 Plaintiff,	)
	) MOTION FOR RECONSIDERATION
14 vs.	) OF ORDER RETAINING JIM
	) BREWER AS A DEFENDANT
15 JIM BREWER, individually and in his	)
official capacity as Acting Principal of	)
16 HJHS Junior High School,	)
CNMI Public School System and	)
17 JOHN AND/OR JANE DOE	) Hearing: Waived
	) Judge: Hon. Terry Hatter
18 Defendants.	)

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 20 The Commonwealth of the Northern Mariana Islands respectfully requests reconsideration of this  
 21 Court's Order of February 12, 2007, retaining Jim Brewer as a defendant in his individual capacity.

22 **DISCUSSION**

23 The only remaining claims in this lawsuit are local law claims, *not* federal claims. CNMI Public  
 24 Law 15-22<sup>1</sup>, codified at 7 CMC § 2201 - 2210, was designed to shield Commonwealth employees from  
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<sup>1</sup> A copy of P.L. 15-22 is attached hereto for the convenience of the Court.

1 lawsuits brought against them in their *individual* capacities for actions performed within the scope of  
 2 their office or employment. Specifically, Section 2, “Findings and Purpose” of PL 15-22 states:

3 The legislature finds that the Public Employee Legal Defense and  
 4 Indemnification Act has failed to achieve its purpose in a cost effective  
 5 manner. *Commonwealth employees are still being unnecessarily sued in*  
*their individual capacities for actions performed as employees of the*  
*Commonwealth*, even though the Commonwealth is liable for their actions  
 6 and no individual liability can attach to the employee.

7 P.L. 15-22, Section 2, page 1, lines 3 - 8 (emphasis added).

8 Section 8 of P.L. 15-22, 7 CMC § 2208(b)(1) provides that actions against the Commonwealth  
 9 are the *exclusive remedy* for wrongful acts of employees acting within the scope of employment.

10 The remedy against the Commonwealth provided for by this Title for  
 11 injury or loss of property, or personal injury or death arising or  
 12 resulting from the negligent or wrongful act or omission of any  
 13 employee of the Commonwealth while acting within the scope of his  
 14 office or employment is *exclusive* of any other civil action or  
 15 proceeding for money damages, by reason of the same subject matter,  
 against the employee whose act or omission gave rise to the claim, or  
 against the estate of such employee. Any other civil action or  
 proceeding for money damages arising out of or relating to the same  
 subject matter against the employee or the employee’s estate is  
*precluded* without regard to when the act or omission occurred.

16 *Id.* (Emphasis added.)

17 The express purpose of P.L. 15-22 was to provide Commonwealth employees immunity from  
 18 lawsuits brought against them in their individual capacity in the same manner that federal legislation  
 19 immunized federal employees from similar lawsuits. P.L. 15-22 “closely tracks provisions of the  
 20 Federal Tort Claims Act,”<sup>2</sup> as amended by Congress, following the decision of the United States  
 21 Supreme Court in *Westfall v. Erwin*, 484 U.S. 292, 108 S.Ct. 580 (1988).

22 The amendments [to the Federal Tort Claims Act] provided, in  
 23 relevant part, that federal *employees sued in their individual*  
*capacities were automatically dismissed from lawsuits after*  
 24 certification to the court by the United States Attorney General that

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25 <sup>2</sup> P.L. 15-22, Section 2, page 2, line 6.

1           the employee was acting within the scope of his/her employment at the  
2           time of the actions which triggered the lawsuit. The government is  
3           simply substituted as the proper defendant if the government is not  
4           already in the case.

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6           These proposed amendments to the Commonwealth Government  
7           Liability Act would accomplish the same purpose for the  
8           Commonwealth.

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10          P.L. 15-22, Section 2, page 2, lines 12 - 19 (emphasis added).

11          The United States Supreme Court has recently held that the intent of the Westfall Act  
12          amendments, after which CELRTCA is patterned, is to shield employees not only from liability, but  
13          from lawsuits themselves. In *Haley v. Osborn*, 127 S. Ct. 881, 75 USLW 4066, (2007), plaintiff sued  
14          federal employee Haley, alleging tortious interference with her employment and conspiracy to cause  
15          her wrongful discharge, and further alleged that defendant Haley's efforts to bring about her  
16          discharge were outside the scope of Haley's employment. The United States Attorney General's  
17          delegate certified that Haley was acting within the scope of employment at the time of the conduct  
18          alleged in the complaint and removed the case to federal court. The District Court, relying on  
19          plaintiff's allegations, entered an order that rejected the Westfall Act certification, denied the  
20          Government's motion to substitute the United States as a defendant in Haley's place, and remanded  
21          the case to state court. The Supreme Court held that the District Court erred in denying substitution  
22          "because the Westfall Act's purpose is to shield covered employees not only from liability but from  
23          suit." *Osborn v. Haley*, 127 S.Ct. at 886. "The District Court's rejection of certification and  
24          substitution effectively denied Haley the protection afforded by the Westfall Act, a measure designed  
25          to immunize covered federal employees not simply from liability, but from suit." *Osborn v. Haley*,  
127 S.Ct. at 892.

23          To substitute the Commonwealth for defendant Brewer in his official capacity but to retain  
24          him in his individual capacity on plaintiff's local law claims defeats the entire purpose of CELRTCA  
25          as expressed by the CNMI Legislature.

1                           **CONCLUSION**

2         The CNMI Attorney General has certified that defendant Jim Brewer was acting within the  
3 scope of his office or employment at the time of the incident out of which plaintiff's claims arose.  
4 Therefore, CELRTCA requires the automatic dismissal of defendant Jim Brewer not only in his  
5 official capacity, but in his individual capacity as well.

6         Respectfully submitted this 19th day of February, 2007.

7                           OFFICE OF THE ATTORNEY GENERAL

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10                          /s/  
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